IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

CRL.A.No. 1478 of 2005(C)

SC.624/2004 of ADDL. SESSIONS COURT (ADHOC-I), KOLLAM
CP.65/2004 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

APPELLANT:

GURUNATHAN, S/O.BALAN,
C.NO.9099,
CENTRAL PRISON, THIRUVANANTHAPURAM-12.

BY ADV. ADV.LATHEESH SEBASTIAN(STATE BRIEF)
ADV. LATHEESH SEBASTIAN - S.B.

RESPONDENTS:

STATE OF KERALA,
REP. BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.C.M.NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

Crl.A.No. 1478 OF 2005

Dated this the 4th day of December, 2006.

J U D G M E N T

Appellant is the accused in S.C.No.624/2004 on the file of the Additional Sessions Court (Adhoc-I), Kollam. He faced trial for the offence under Section 8(1) read with Section 8(2) of the Abkari Act. The prosecution case against the appellant is that on 4.4.2003 at about 8.30 a.m , the appellant was found carrying 8 liters of arrack in a white can of 10 liters of capacity along the pathway leading from Ellukuzhi Jayanthi Colony to Kodiyattu ela on the southern side of the house of one Gopalan Mestri in Punukkuannoor cheri of Kottamkara village. He was arrested at the spot by PW4, the Preventive Officer. The contraband article was seized from the appellant and samples were taken and got analysed by the prosecution. After completion of the investigation, a case has been charged against the appellant. To prove the case against the appellant, PWs 1 to 5 have been examined. Prosecution relied on Exts.P1 to P6 and MO1 Cannas was also produced. On closing the prosecution evidence, the appellant was

questioned under Section 313 of the Code of Criminal Procedure. He denied the commission of the offence as alleged against him and stated that the case is foisted against him on the instigation of PW1, who was enmical towards him. However, on considering the prosecution evidence, the trial court found the appellant guilty of the offence charged against him and he was convicted under Section 8(2) of the Abkari Act and sentenced to undergo R.I for three years and also directed to pay fine of Rs. One lakh with default sentence of fine, S.I for a further period of one year more was ordered. The benefit under Section 428 also was allowed in favour of the appellant. The above conviction and sentence awarded against the appellant are assailed in this appeal. Since the appeal was filed through the jail authorities, a member from the State brief panel has been appointed to defend the appellant before this Court.

2. This Court heard the learned counsel appearing for the appellant as well as the Public Prosecutor. The counsel appearing for the appellant submits that the trial court went wrong in placing reliance on the interested testimonies of the

prosecution witnesses and the trial court ought to have rejected the evidence of PW1, who was enmical towards the appellant. He further submits that the sentence awarded against the petitioner is excessive and hence a lenient view may be taken by this Court.

3. The prosecution case against the appellant is that on getting reliable information that the appellant is dealing illicit arrack, Pws 4 and 5 came to the spot and found that the appellant is in possession of MO1 can having the capacity of 10 liters and 8 liters of arrack in it. PW4 had prepared Ext.P1 seizure mahazar in he presence of PWs 1 and 2, the independent witnesses, who signed Ext.P1 mahazar. On preparation of the mahazar, PW4 had seized MO1 and sealed the same in the presence of the independent witnesses. PW5 is the Excise Official, who accompanied PW4 at the time of detection of the crime. PW5 fully supported the evidence of PW4 and had given evidence before the court that at the day of the incident, he accompanied PW4 and PW4 arrested the appellant and seized the contraband article from him. PW5 further had stated that out of the 8 liters of arrack

contained in MO1 can, PW4 had taken sample of 200 ml in a bottle of 375 ml capacity and thereafter residue of the contraband in the cannas and the sample bottle were sealed from the place of occurrence and they were labeled with signatures of Pws4, 1 and 2. These witnesses had described all the actions taken by PW4 at the spot of the incident. Pws 1 and 2 are two independent witnesses, who had signed Ext.P1 seizure mahazar. Though a question was suggested to PW1 that he was enmical towards the appellant, the answer given was negative and that suggestion alone can be considered as a ground to reject the evidence of PW1. Further, it could be seen that both Pws 1 and 2 have signed Ext.P1 seizure mahazar and they have given evidence before the court what they have watched at the scene of occurrence and the action taken by PW4. The trial court had fully believed these witnesses and found that the appellant had committed the offence charged against him. On an over all appreciation of the evidence of the prosecution witnesses, this Court is of the view that the findings entered by the trial court and the acceptance of the prosecution evidence require no interference by this Court. That apart, Ext.P6 chemical

analysis report would show that the sample contained 30.60% of ethyl alcohol by volume and further it is proved by the prosecution that the appellant had in his possession a MO1 can, which contained 8 liters of illicit arrack and thereby committed the offence charged against him. This Court confirmed the findings entered by the trial court against the appellant.

4. With regard to the sentence, the trial court itself had found that there were seven Abkari cases pending against the appellant in the same court and the case set up by the appellant is that he was falsely implicated on the instigation of PW1. The suggestion put to that effect to PW1 was negatived by the answer given by him.

In the above circumstances, this Court is of the view that rigorous imprisonment for three years and fine of Rs. One lakh under Section 8(2) for an offence committed under Section 8(1) is not excessive. Accordingly, the conviction entered and sentence awarded against the petitioner are

confirmed.

Consequently, the appeal stands dismissed.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO.1478 OF 2005

JUDGMENT

4th December, 2006.